1969

The State of Utah v. Rebecca M. Jimenez : Brief of Respondent

In The Supreme Court of the State of Utah

STATE OF UTAH,
Plaintiff-Respondent,

vs.

REBECCA M. JIMINEZ,
Defendant-Appellant.

BRIEF OF RESPONDENT

Appeal from the judgment of the Third District Court, Salt Lake County, State of Utah, Hon. [illegible] K. Snow, Presiding.

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In The Supreme Court of the State of Utah

STATE OF UTAH,
Plaintiff-Respondent,
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REBECCA M. JIMINEZ,
Defendant-Appellant.

Case No. 11346

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant appeals from the judgment of the conviction of second degree murder and the trial court's denial of motions to suppress and for a new trial.

DISPOSITION IN THE LOWER COURT

Appellant was charged by information with the crime of murder in the second degree. Appellant's counsel moved to suppress any and all statements made by the defendant at her interrogation. The Court denied defendant's motion. The defendant was tried by jury for the crime of second degree murder. The jury returned a verdict of guilty and de-

fendant moved for a new trial. The motion was de-nied and defendant was sentenced to the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Respondent seeks a determination by the Court of whether the appellant's confession was made during custodial interrogation. If the Court concludes that it was not so made, respondent seeks affirmance of the conviction. If the Court finds the confession to have been made during custodial interrogation, respondent seeks reversal of the judgment of conviction, vacation of the denial of respondent's motions for new trial and to suppress her confession, and remand for a new trial.

STATEMENT OF FACTS

Near the hour of midnight on January 14, 1966 Salt Lake City police officers arrived at an apartment at 852 South West Temple to investigate a report that a man had been injured. Upon their arrival, they found the body of Manuel Ray Jiminez on a bed. In connection with the investigation of the death, appellant was taken to Salt Lake City Police Headquarters shortly before 12:30 a.m. on January 15 (R.57). Officer Elton testified that at the time he arrived at the apartment, appellant was "visibly upset" (R.45) and that at this time she was a "suspect" in the case (R.37).

At the police station, appellant was questioned

at three different times between the hours of 1:30 a.m. and 4:00 a.m. (R.267-271). During the first interrogation period, Officers Cahoon and Wesley were present with the appellant, who was otherwise alone in the interrogation room (R.267). Before any questioning began, Officer Cahoon advised appellant that she had the right to remain silent, that any statements she might make could be used against her and that she could consult with an attorney (R.51,67). Officer Cahoon testified that appellant was "not specifically" under suspicion at the time of the first interrogation (R.51), which lasted for 25 to 30 minutes (R.58). The record does not disclose the nature of the questions asked, nor the responses given during the first period of questioning, but there is testimony that appellant's account of the events earlier that evening was fraught with "discrepancies" (R.269).

The second interrogation began at some time between 2:30 a.m. and 3:15 a.m. (R.54,269), and lasted from ten (R.58) to 25 minutes (R.271). During this questioning period, Officers Cahoon, Shields, Elton and Wesley were present with the defendant in the interrogation room (R.54). There is testimony that at this time, appellant was "under suspicion" of having killed the deceased (R.51,61), and that the purpose of questioning her a second time was to investigate "several discrepancies" in appellant's statement during the first period of questioning (269). The officers discussed with appellant the possibility of her involvement in the crime (R.60), and questioned her regarding what appeared to be blood stains on her

skirt and nails (R.66). Appellant was asked to submit to a sample scraping of her nails (R.54), but this was not done until the third questioning period (R.292). During this second interrogation, appellant implicated another man in the killing (R.54). She was then asked to submit to a polygraph test, but refused (R. 66). As a result of the second period of questioning, another officer was sent back to the apartment building to recover a knife suspected to have been used to stab the deceased (R.271).

The third interrogation period began "around 4:00 a.m." and lasted only a short time (R.58,271). Officers Shields and Cahoon were present with appellant, who was then the "sole suspect" in the case (R.55,51). Again the blood stains on appellant's skirt and nails were discussed, and Officer Cahoon took a sample scraping from appellant's nails (R.292). Officer Cahoon then left the interrogation room, whereupon appellant confessed to having stabbed the deceased, and described the events surrounding the stabbing (R.292). Appellant was then formally placed under arrest (R.240). When asked if she would give a signed statement she refused, stating that she wanted to see an attorney, whereupon the questioning ceased and an attorney was called for her (R.300).

Other relevant portions of the record disclose that at some time prior to the confession, appellant stated that she didn't wish to have counsel (R.63). It also appears that the officers, prior to questioning her, told her that if she was tired, she could lie down,

and that she could go to the ladies room if necessary (R.66). She was given a cup of coffee (R.66). Appellant's son-in-law was present at the police station, but it does not clearly appear in the record that appellant ever requested to see him (R.64). Officer Cahoon testified that appellant could have left the police station at any time prior to formal arrest (R.282).

Finally, with respect to the warnings given appellant, the record shows that, while the appellant was warned of her right to remain silent, that anything she might say could be used against her, and that she could consult with an attorney (R.51,67,82), she was at no time prior to making incriminating statements advised that if she could not afford an attorney one would be appointed in her behalf. Indeed, two of the interrogating officers testified that no such warning was given (R.63,88).

ARGUMENT

POINT I

APPELLANT WAS NOT SUBJECTED TO CUSTODIAL INTERROGATION PRIOR TO CONFESSING TO THE CRIME.

This case presents an important issue of constitutional dimensions in the administration of the principiles announced in **Miranda v. Arizona,** 384 U.S. 436 (1966). It is the respondent's position that there is here presented a single question for determination by this Court, **viz.,** whether appellant was undergoing "custodial interrogation" at the time she confess-

ed to the crime and related the attendant details to police officers. It is not questioned that the full complement of warnings required by **Miranda** were not given to appellant, nor that her confession was admitted at trial in evidence against her over a timely objection and motion to suppress (R.115). Further even though the record discloses that appellant indicated prior to her confession that she did not wish to have an attorney, no effective waiver of her rights was ever made, for **Miranda** makes it clear that one cannot waive rights of which he has not been fully advised, 384 U.S. at 479. Accordingly, the case is reduced to an examination of the surrounding circumstances in order to determine whether appellant's confession was made during "custodial interrogation" within the purview of **Miranda.**

We must begin with **Miranda** itself, where the court spoke of "custodial interrogation" in the following terms:

> **By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. This is what we meant in Escobedo when we spoke of an investigation which had focused on an accused. 384 U.S. at 444 & id., n. 4.**

While it seems clear that one who has been arrested or physically restrained is within "custody" for the purposes of **Miranda, Lathers v. U.S.,** 396 F.2d 524 (5th Cir. 1968), **People v. McKay,** 29 App.Div.2d 834, 287 N.Y.S.2d 795 (Sup. Ct. 1968), the unfortunate-

ly imprecise formulation contained in the phrase "otherwise deprived of his freedom of action in any significant way" has created difficulty in the **ad hoc** decision of cases where there has been no formal arrest or actual physical restraint. Indeed, the legacy of **Miranda** has been a growing volume of cases turning on this single point. The case at bar is the first in our state to join ranks with such decisions.

The cases which have dealt with the problem here presented indicate that the **place** of questioning is perhaps the most significant fact in determining whether incriminatory or exculpatory statements were made during custodial interrogation. Generally, it may be said that interrogation which takes place in a police station will be found to have been custodial, **Lathers v. United States,** 396 F.2d 524 (5th Cir. 1968); **U.S. v. Harrison,** 265 F.Supp. 660 (S.D.N.Y. 1967); **Commonwealth v. Banks,** 429 Pa 53, 239 A.2d 416 (1968); **People v. Golwitzer,** 52 Misc.2d 925, 277 N.Y.S.2d 209 (Sup. Ct. 1966), and the four cases decided in **Miranda** involved police station interrogations, 384 U.S. at 491, 493, 495, 497. In a dictum, the Court of Appeals for the Fourth Circuit has said that custodial interrogation "certainly includes all station-house or police car questioning by the police for there the 'potential for compulsion' is obvious." **U.S. v. Gibson,** 392 F.2d 373, 376 (4th Cir. 1968). Yet there are cases which disprove the broad assumption made in **Gibson.** For example, station-house questioning was found not to amount to custodial interrogation in **People v. Williams,** 56 Misc.2d 837, 290

N.Y.S.2d 321 (Sup. Ct. 1968). There, a police offic had been questioned at the station-house regardi the whereabouts of his automobile at the time crime had been committed. On the basis that h could not reasonably have believed himself to hav been restrained, the court held that his statemen given during interrogation were admissible despi that **Miranda** warnings had not been given. And i **Campbell v. State,** 4 Md.App. 448, 243 A.2d 643 (196 statements made by a defendant in a police car aft **arrest** were held not to have been made duri custodial interrogation. See also **State v. Travis,** ..... Ore....., 441 P.2d 597 (1968) (questioning in poli car held not custodial interrogation).

Other cases indicate that the **Miranda** warning may apply to questioning which takes place othe than at the police station. See, e.g., **Windsor v. U.S.** 389 F.2d 530 (5th Cir. 1968) (defendant's hotel room **U.S. v. Turzynski,** 268 F.Supp. 847 (N.D. Ill. 1967) (de fendant's clinic); **Myers v. State,** 3 Md.App. 534, 24 A.2d 288 (1968) (police car); **State v. Ross,** 183 Neb. 157 N.W.2d 860 (1968) (defendant's hospital room **Commonwealth v. Sites,** 427 Pa. 486, 235 A.2d 38 (1967) (defendant's home); **Commonwealth v. Jeffer son,** 423 Pa. 541, 226 A.2d 765 (1967) (hospital corri dor).

The greatest number of reported cases, how ever, have found that questioning which took plac somewhere other than the station-house was no "custodial interrogation" within the meaning of **Mir**

anda. A list of these cases appears in the Appendix, **infra.**

It is apparent, therefore, that the **place** where questioning occurs is not absolutely determinative of the question of custodial interrogation; rather, the entire circumstances surrounding the questioning must be taken into account. See **People v. P.,** 21 N.Y. 2d 1, 286 N.Y.S.2d 225 (1967).

In at least three American jurisdictions, the question of custodial interrogation appears to involve not only the **place** of questioning, but the defendant's **reasonable belief vel non** that he is deprived of his freedom of action. Thus, the court in **People v. Hazel,** 60 Cal. Reptr. 437, 252 Cal.App.2d 412 (Dist. Ct. App. 1967) stated:

> **(C)ustody occurs if a suspect is led to believe, as a reasonable person, that he is being deprived or restricted of his freedom of action or movement under pressures of official authority . . . (T)he custody requirement of Miranda does not depend on the subjective intent of the law enforcement officer-interrogator but upon whether the suspect is physically deprived of his freedom of action in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation. 60 Cal.Rptr. at 440. (Emphasis added.)**

This rationale was adopted by the Maryland court in **Myers v. State,** 3 Md.App. 534, 240 A.2d (1968) and by the New York Court of Appeals in **People v. P.,** 21 N.Y.2d 1, 286 N.Y.S.2d 225 (1967).

Let us examine the circumstances in the instant case. It is respondent's contention that there are facts of record which show that appellant's confession was not made during custodial interrogation. At the time she confessed, appellant was not under arrest; in fact, one of the officers testified that he could not have prevented appellant from leaving had she wished to go. In addition, the "incommunicado" atmosphere of which **Miranda** speaks was not present here, for the record shows that appellant was given an opportunity to rest, to go to the ladies' room, and to drink a cup of coffee. And there is nothing to show a deliberate design by the police to prevent appellant from speaking with her son-in-law, who was present at the station. Indeed, a reading of the entire record discloses a conscious effort on the part of the police to make appellant as comfortable as possible under the circumstances. Further, no lengthy questioning occurred here, and as soon as appellant expressed a wish to see her attorney, the questioning stopped. Finally, the record contains nothing which indicates that the officers employed coercive tactics of either an overt or a covert nature.

CONCLUSION

The case at bar admittedly presents a difficult question, and the respondent is aware of the policies which may be asserted in support of appellant's position. But equally compelling are the policy arguments in favor of affirming the conviction herein. A distinguished jurist, dissenting in a case much like

the case at bar, has made an eloquent appeal in support of the position respondent here asserts. **Commonwealth v. Banks,** 429 Pa. 52, 239 A.2d 416, 419 (Musmanno, J., dissenting). However, the respondent is also aware of its fundamental duty to assure the just administration of the law:

> **The U.S. Attorney is the representative not of an ordinary party to a controversy, but of a sovereign whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. Berger v. U.S., 295 U.S. 78, 88 (1935). (Opinion by Sutherland, J.)**

Recognizing this obligation, and mindful of the societal interests here in conflict, respondent respectfully submits to this Court the difficult question of whether appellant's confession was made during custodial interrogation.

Respectfully submitted,

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